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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-----------------------|---------------------|------------------|
| 10/517,331 | 12/09/2004 | Claudio Miguel Suarez | 331.1082 | 2921 |
| 23280 | 7590 | 09/10/2007 | | |
| DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018 | | | | |
| | | | EXAMINER | |
| | | | BOGART, MICHAEL G | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |
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| | | | 09/10/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/517,331 | Applicant(s) SUAREZ, CLAUDIO MIGUEL | |
| | Examiner Michael G. Bogart | Art Unit 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-14 and 18-27 are rejected under 35 U.S.C. § 102(b) as being anticipated by Roxendal *et al.* (WO 99/27879 A2; hereinafter: “Roxendal”).

Regarding claims 11 and 24, Roxendal teach an article (1) for the absorption and retention of a liquid fluid, comprising: a cover (2) permeable to fluids and configured to be in contact with a user's skin; a transfer layer (5) provided below the cover, the transfer layer (5) including a top layer (5d) of predominantly hydrophobic fibrous material and a bottom layer (5e) of predominantly hydrophilic material superimposed on the top layer and joined to the top layer (5d) at a plurality of longitudinal joining regions (10) of the top and bottom layers so as to form a plurality of channels (10) at the joining regions (10), a plurality of peaks being formed of the top and bottom layers (5d, 5e) between adjacent ones of the plurality of channels (10), wherein a transversal thickness of the top and bottom layers is lower at the joining regions than at the peaks, wherein the channels (10) are in contact with the cover (2);

an absorbent core (4) configured to absorb and retain the liquid fluid (page 6, line 17- page 7, line 14; page 8, lines 12-17; page 9, line 31-page 12, line 5) (see figures 2, 5 and 11, *infra*).

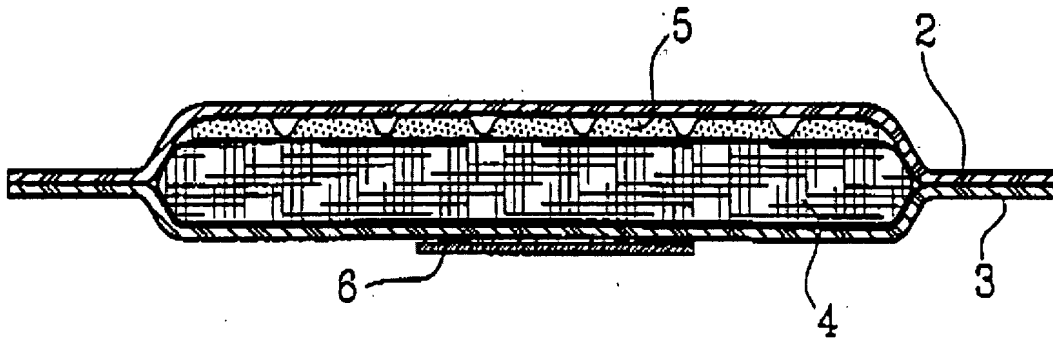


FIG. 2

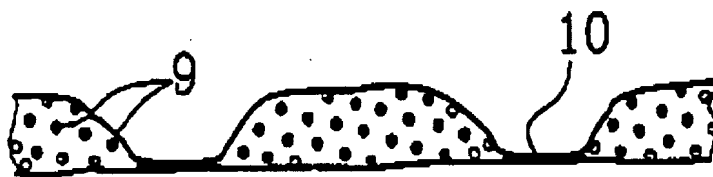


FIG. 5

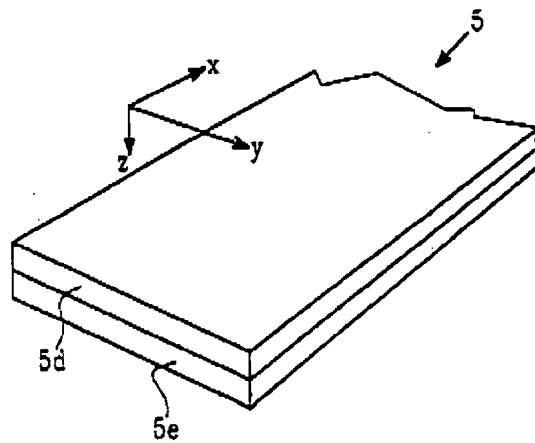


FIG. 11

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Regarding the limitation "longitudinal," Roxendal teaches at least one embodiment where the bonded regions extend diagonally, and thus extend partially in a longitudinal direction (see figure 1, infra).

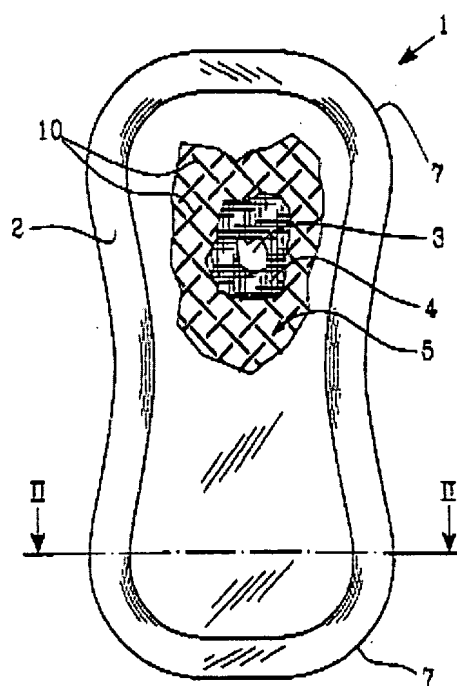


FIG. 1

Regarding claim 12, Roxendal teaches peaks (9) which define zones of distribution to the channels (10)(liquid flows in a z-directions down peaks to channels).

Regarding claims 13, 14, 18-20 and 25, Roxendal teaches that top layer (5d) is more hydrophobic than the lower layer allowing unidirectional downward flow in a z-direction (5e)(page 12, lines 14-16).

Regarding claims 21 and 26, Roxendal teaches a diaper (1)(abstract).

Regarding claim 22, Roxendal teaches parallel lines (10)(figure 1).

Regarding claims 23 and 27, Roxendal teaches that the channels (10) form a linear regions of fluid distribution (figure 1).

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Roxendal.

Roxendal does not expressly disclose the specifically claimed dimensional limitations and fiber density. Mere changes in size alone are not sufficient to patentably distinguish a claimed invention over the prior art. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984).

Response to Arguments

Applicant's arguments filed 08 June 2007 have been fully considered but they are not persuasive.

Applicants assert that Roxendal does not show the transfer layer comprising a top layer of predominately hydrophobic fibrous material as claimed. Applicants further assert that that Roxendal's layer (5d) is not predominantly a hydrophobic fibrous material. This argument is not persuasive because Roxendal teaches that layer (5d) is less hydrophilic than, hence more hydrophobic than, subjacent hydrophilic layer (5e)(page 12, lines 14-16). Applicants'

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specification does not provide a specific definition for the terms “hydrophobic” or “hydrophilic”. As such, the claims are construed according to the broadest reasonable interpretation consistent with the overall description of the specification. See MPEP § 2111. As interpreted herein, “predominantly hydrophobic” means that the layer (5d) is chiefly non-water retaining relative to the “predominantly hydrophilic” layer (5e) that is chiefly water retaining relative to layer (5d).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner’s supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization

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where this application or proceeding is assigned is (571) 273-8300 for formal communications.

For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
31 August 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

